

LEE S. BIELSKI

IBLA 79-64 Decided February 8, 1979

Appeal from the decision of the New Mexico State Office of the Bureau of Land Management, dismissing appellant's protest against the impending issuance of an oil and gas lease to the second drawee (NM 30886).

Reversed and remanded.

1. Evidence: Generally—Oil and Gas Leases: Applications: Generally

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

2. Administrative Practice—Evidence: Generally—Oil and Gas Lease Applications: Generally

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive

proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

3. Administrative Authority: Enforcement of Criminal Violations—Office of Hearings and Appeals

The Board of Land Appeals, in its adjudication of appeals to determine rights of parties to receive or preserve interests in Federal lands, has a concomitant obligation to preserve the integrity of the process, and where it appears to the Board that the administrative record of a case contains strong evidence of multiple violations of 18 U.S.C. § 1001 (1976), the Board will refer the matter with its recommendation that an investigation be initiated to determine whether criminal charges should be brought.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On May 23, 1977, the New Mexico State Office of the Bureau of Land Management (BLM), conducted a drawing of simultaneously filed oil and gas lease offers. Four thousand, nine hundred and two offers were filed for one of the parcels included in that drawing, i.e., Parcel NM-704. Three drawing entry cards for this parcel were drawn to establish priority of consideration of the lease offers represented by the respective cards. The drawees, in order, were:

- (1) Tina A. Regan, 5000 Hollywood Blvd., Hollywood, FL 33021,
- (2) Lucy Allen Dohn, 1888 Century Park E. 6th Floor, Los Angeles, CA 90067,
- (3) Lee S. Bielski, 5035 Kingle St., NW., Washington, DC 20016

The Regan offer, having first priority, was rejected for the reason that the card was improperly dated. On appeal to this Board, the rejection was affirmed. Tina A. Regan, 33 IBLA 213 (1977). This cleared the way for adjudication of the offer filed by the number two drawee, Lucy Allen Dohn.

However, on March 22, 1978, R. Hugo C. Cotter filed a formal protest against the issuance of the lease to Dohn. Cotter, an attorney, declared that he had filed a card for Parcel NM-704, although his card had not been drawn. It was, and is, Cotter's contention that Dohn's card falsely represented that she was the sole party in interest in the offer and any lease issued pursuant thereto; that Dohn was in fact a client of a leasing service, Leland Capital Corporation (LCC), whose contract with Dohn provided for a "security interest" in any lease Dohn might be awarded "to secure payment of any advance rentals paid by LCC on Client's behalf"; that this invested LCC with an "interest" in every offer filed by LCC on behalf of its clients, as defined in 43 CFR 3100.0-5(b); that the failure to disclose this interest and file the statements required by 43 CFR 3102.7 disqualified the offer and mandated its rejection;

that other LCC clients also filed offers for parcel NM-704 in which LCC had the same "security interest," and therefore LCC had an interest in multiple filings for that parcel in violation of 43 CFR 3112.5-2, requiring rejection of all cards filed for that parcel by LCC clients, including Dohn's. Cotter further asserted that, as LCC was Dohn's agent, rather than a mere amanuensis, the failure to file the separate statements required by 43 CFR 3102.6-1 was a violation of that regulation.

In support of this protest, Cotter submitted a blank copy of the contract form allegedly in use by LCC at the time Dohn contracted for LCC's services. This specimen contract contains the "Security Interest" clause as its paragraph 3.

Subsequently, Lee S. Bielski, the number three drawee, adopted the contentions argued by Cotter and filed her own protest against the issuance of the lease to Dohn.

BLM responded to the Cotter/Bielski protests by calling upon Dohn to furnish additional evidence. Action on the protests was deferred. Dohn responded to the order to supply further information by stating that her business address was c/o Leland Capital Corporation at the corporation's office, that she had selected the parcel which was the subject of her offer, that she had personally signed the drawing entry card after the offer was formulated, and

that her card was dated by her after the offer was formulated. Leland Capital Corporation, by its vice president, submitted what purported to be a machine copy of its notarized contract with Philip H. Dohn, Jr. and (Mrs.) Lucy Allen Dohn. Executing the contract on behalf of Leland Capital was its representative, whose signature appears to read "Stephen Z. Flynn." The contract is dated in its preamble "this 26th day of April 1977." The contract is acknowledged by one Deborah Lile, Notary Public, who twice dated her acknowledgement "April 26, 1977."

The machine copy of the contract between Leland Capital and the Dohns was on a different form than the specimen contract submitted by Cotter, and did not contain the "security interest" clause. The letter transmitting the machine copy of the Dohn contract to BLM was signed by Leland Capital Vice President Paul R. Colavecchi, and asserted, "Leland Capital Corporation has no interest in any leases won by the clients." This letter is dated May 10, 1978.

After BLM's receipt of the Dohn statements, the Colavecchi letter and the machine copy of the purported service contract between Leland Capital and the Dohns, BLM issued separate decisions dated June 15, 1978, dismissing the protests of Cotter and Bielski. Cotter, acting on behalf of both protestants, then requested reconsideration of those decisions on the ground that the information furnished by Leland Capital and Lucy Allen Dohn was false and

fraudulent. His allegations at that point are set out verbatim, as follows:

1. The Service Contract on which the Decision was based is False and a Fraud on the United States.

The Leland Capital Corporation Service Contract which you used to arrive at your decision, a copy of which is attached, was purportedly signed by the parties and notarized on April 26, 1977, some 22 days prior to Dohn's submission of an Entry Card on the captioned lease. It bears the acknowledgement of California Notary Public Deborah Lile who asserts that the Dohn's personally appeared before her on April 26, 1977 and signed the contract. The notary's seal shows that her Commission expires August 9, 1981. Under Section 8204 (Government) of the California Annotated Codes, a copy of which is attached both in its original form and as amended a Notary's commission has a term of four (4) years and this has been true as you can determine from the copy of the statute at least since 1934. This means that Deborah Lile obtained her commission as a Notary Public on August 10, 1977, more than three months after she allegedly notarized the Dohn signatures. It cannot be argued that she may have been a Notary Public on April 26, 1977, under a previous commission since if that were the case her seal would have to show an expiration date in 1977 as provided in Section 9207 (Government), a copy of this statute as amended also being attached. It is indisputable that if the Dohn's ever did actually sign the Service Contract sent to you, it had to be after August 10, 1977. Since Lucy Allen Dohn's entry card is dated May 18, 1977, the agreement sent to you could not have been in effect at the time she made an offer to lease. Since she did not within the prescribed time submit a copy of her true agreement with Leland Capital she should be disqualified on that ground alone. The false notarization is a crime in California and the attempted fraud on any agency of the United States of America should bear investigation.

2. The Actual Service Contract between Lucy Allen Dohn and Leland Capital Corporation had to be executed on the Form submitted with my Protest.

Through March, 1978 the only Service Contract from [sic] supplied by Leland to its customers was the one attached

to my protest. As late as March 13, 1978, it was the only such form of contract in existence as more fully appears from the Affidavit of Billie Hall attached hereto.

3. That the Form of Service Contract Falsely claimed to have been signed by Lucy Allen Dohn on April 26, 1977 was not printed until almost one year later.

During the Spring of 1978 Joe Schutz of Schutz Abstract Company, Santa Fe, New Mexico, was employed by Leland Capital to assist in the preparation and review of a form of Service Contract which did not violate sole party in interest regulation and the result was the form submitted to you as signed April 26, 1977, as more fully appears from my affidavit attached hereto.

Lucy Allen Dohn has submitted to you a false Service Contract, fraudulent on its face without outside evidence necessary to show the fraud. Reconsideration of her submission must require her offer to be dismissed and the captioned lease offered to Lee S. Bielski, third party holder. [Emphasis in original.]

In support of these contentions Cotter supplied his own affidavit concerning his interview with Joe Schutz, an affidavit by one Billie Hall, attesting that Leland Capital has presented to her the form of contract containing the "security interest" clause on March 13, 1978, and copies of California statutes relating to the term of the office of a notary public.

Upon receipt of the foregoing, BLM vacated its dismissal of the Cotter/Bielski protests and issued another decision dated July 17, 1978, calling upon Dohn to supply certain additional information. The decision, addressed to her at the office of Leland Capital Corporation, recited the allegations made by Cotter in his motion

for reconsideration of his protests, and required Lucy Allen Dohn to submit the following information:

1. Certified proof from the State of California that Deborah Lile was a Notary Public on April 26, 1977.
2. The date Deborah Lile's commission expired, if it expired in 1977.
3. The date it was renewed and the next expiration date.
4. Explain how the contract submitted by the offeror was in existence at the time the offer was filed.

The statements must be filed within thirty (30) days from receipt of this Decision. In the event, the statements are not filed within the time allowed, this offer to lease/application will be considered finally rejected and closed.

* * * * *

The only response was a letter from an attorney, Gary E. Gleicher, whose law office letterhead bears the same address as Leland Capital Corporation, the pertinent portion of which is as follows:

I am writing this letter on behalf of Mr. and Mrs. Phillip Dohn in response to your request for additional information regarding the Service Contract between LUCY ALLEN DOHN and LELAND CAPITAL CORPORATION, hereinafter "LELAND".

Mr. and Mrs. DOHN became clients of LELAND on April 26, 1977. On that date, they executed a valid Service Contract with LELAND and issued a check to LELAND in the amount of \$2,000.00 as consideration for

said agreement. A copy of said check is attached hereto for your reference.

On April 18, 1978, your office requested evidence of the Service Agreement between LELAND and LUCY ALLEN DOHN. A thorough search of LELAND's files revealed that the original contract had been misplaced. In an attempt to comply with the regulations and requirements of the Bureau of Land Management, on April 26, 1978, a duplicate contract was prepared, executed by the DOHNs and notarized by Ms. DEBORAH LILE.

Due to a clerical error, the word "Duplicate" was omitted from the prepared copy of the contract. Further, when the document was given to Ms. LILE for notarization, she inadvertently affixed the date April 26, 1977 instead of April 26, 1978, the accurate date of notarization. Coincidentally, the date of the original statement and the date of the notarization were exactly one (1) year apart, which may explain why Ms. LILE inadvertently affixed the incorrect date.

Mr. and Mrs. DOHN and LELAND have made every effort to comply with the requirements of the Bureau of Land Management, and, by this letter, it is my intention to clear up any confusion which has resulted in regards to this matter. In reviewing the facts, I find the above to be true and correct.

* * * * *

Not only is the foregoing totally unresponsive to the requirement for the specific information called for by BLM's decision of July 7, 1978, we regard it to be of extremely dubious credibility.

A copy of the Gleicher letter was provided to Cotter by BLM. Cotter responded by pointing out that Gleicher's letter failed to provide any of the information required, and did not dispute the sworn evidence previously submitted by Cotter "that a different

and defective agreement was in use by Leland Capital in 1977." Cotter further questioned whether the explanation that the notary had "inadvertently" affixed the date April 26, 1977, below her signature also served to explain why that date had been typed in the body of her acknowledgement as well. Cotter also queried why, if Gleicher was the Dohn's lawyer, he could not supply his own clients' copy of 1977 contract, even if the Leland Capital copy had been "misplaced."

Nevertheless, by its decision of November 6, 1978, BLM again dismissed the Cotter/Bielski protest "on the basis that this office cannot accept your statements as positive proof of the allegations made."

Cotter has abandoned his protest on his own behalf in favor of asserting it on behalf of his client, Lee S. Bielski. In that capacity he has filed this appeal from BLM's dismissal of Bielski's protest. A copy of the appeal was served Lucy Allen Dohn at her address of record (the LCC address), but she has not responded.

Appellant's statement of reasons is focused on the fact that the BLM decision of July 17, 1978, required Lucy Allen Dohn to submit four specific items of information within 30 days, failing which her "offer to lease/application will be considered finally rejected and closed." Appellant points out that none of the required information

was submitted, that the reply from Dohn's attorney was nonresponsive to the decision, and that the time set by BLM for compliance has long since expired. Therefore, appellant contends, BLM should have implemented its own decision, rejected Dohn's offer and issued the lease to her. We agree.

[1] Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order directing him to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Ricky L. Gifford, 34 IBLA 160, 163 (1978). Even where the lease has issued, the Department may require the lessee to submit additional information to establish that he was rightly entitled to have received it, and if he fails or refuses to respond, the lease may be canceled. Robert A. Chenoweth, 38 IBLA 285 (1978), and cases cited therein. The State Office had full authority to require the offeror to submit the additional information it deemed necessary to determine the offeror's qualifications, Ricky L. Gifford, *supra*; Evelyn Chambers, 31 IBLA 381 (1977); D. E. Pack, 30 IBLA 166 (1977). Therefore, when Dohn did not supply any of the information she was required to submit within the time prescribed, her offer should have been rejected, as the BLM order indicated it would be.

[2] Moreover, the State Office erred in dismissing appellant's protest for the reason that his statements and evidentiary submissions

could not be accepted as "positive proof of the allegations made." Perhaps the State Office was led into this error by our numerous holdings to the effect that where there is no evidence in the administrative record of a violation by the offeror holding priority, the burden is on the protestant attacking the validity of the offer "to prove" an accusation that there is a disqualifying discrepancy. See, e.g., Clyde E. Frazier, 36 IBLA 141 (1978), where the verb "to prove" appears in the headnote in this context, but not in text, which, at 36 IBLA 143, states only that "the burden is on the protestant to submit material evidence of an accusation * * *." Virginia L. Jones, 34 IBLA 188, 193 (1978), requires a protestant "to submit competent proof of an accusation * * *," as do a number of earlier decisions. But in Georgette B. Lee, 3 IBLA 171, 176 (1971), we held simply that, "[a]bsent an adequate showing of disqualification, a protest alleging disqualification is properly rejected." In Bruce E. Watkins, 36 IBLA 168 (1978), we said, "a successful drawee * * * will not be disqualified * * * by reason of unsubstantiated allegations * * *."

Admittedly, the burden of a protestant in such cases has been poorly and imprecisely defined. But insofar as our research reveals, we have never gone so far as to hold a protestant must make "positive proof" of his allegation to avoid dismissal of his protest. We think the rule should be that where a protestant supports his contention with sufficient evidence to warrant further inquiry or investigation

by BLM, the protest should not be summarily dismissed, but adjudicated on its merits after all available information has been developed.

In this instance, Cotter not only supplied sufficient evidence to inspire BLM to demand further information from Dohn, he also detected and pointed out to BLM how the submissions from Dohn and LCC were false, and buttressed his contention that Dohn's evidence was manufactured by supplying copies of the relevant California statutes relating to notaries public, and with affidavits. This evidence was the basis of BLM's second demand on Dohn, so it is apparent that BLM recognized that Cotter's evidence was adequate to create a justiciable issue, which it became incumbent on the Bureau to resolve. But when BLM's further demand for specific material and relevant information was fended off by Gleicher's unresponsive letter, BLM reacted by summarily dismissing the Cotter/Bielski protest, presumably with the intention of issuing the lease to Dohn. This was clearly improper.

[3] This Board is of the opinion that the administrative record strongly indicates multiple violations of 18 U.S.C. § 1001 (1976), which provides:

§ 1001 - Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly

and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

Two items of correspondence sent by BLM to Dohn at the offices of LCC contained express admonitions that the statute, supra, makes it a crime to make false, fictitious, or fraudulent representations to a department or agency of the United States. Moreover, the drawing entry card used by Dohn also bears such an admonition.

There can be no gainsaying that the machine copy of the notarized service contract between Philip H. Dohn, Jr., Lucy Allen Dohn, and Leland Capital Corporation was manufactured for the purpose of submitting it to BLM after receipt of BLM's demand for a certified copy of the contract between them at the time the Dohn offer was filed. This spurious document was then submitted to BLM by LCC, in response to that order, in such a way that it appeared to be a copy of the original one in force when Dohn's offer was filed.

Likewise, there can be no doubt that the spurious contract was falsely notarized. The text of the notary's acknowledgment reads:

39 IBLA 225

whether they journeyed to Los Angeles, California, to sign the "duplicate" of their original contract on April 26, 1978. If they did not do so, does the notary's acknowledgment falsely declare that they personally appeared before her? Could the Dohns' signatures be forgeries? The need to explore these questions is increased by yet another startling fact. Gleicher's letter states that the "duplicate" was executed by the parties and acknowledged by the notary on April 26, 1978, which "coincidentally" happened to be the first anniversary of the original contract executed, allegedly, on April 26, 1977, and through error and inadvertence, all the dates on the 1978 "duplicate" were entered as April 26, 1977, and the word "Duplicate" was omitted, so that the instrument appeared to be a copy of a contract executed in 1977, although it was actually done on April 26, 1978. That date, April 26, 1978, also happens to be the same date that BLM's demand for further evidence was delivered to the LCC offices in Los Angeles. BLM's order to produce the contract was dated April 18, 1978, and was mailed by certified mail, restricted delivery, to Lucy Allen Dohn at her "business address," at the offices of Leland Capital. There it was received by someone who signed the postal service's return receipt card "Lucy Allen Dohn by D. Wise," on "4-26-78." Thus, if we are to believe Gleicher's explanation, on that same date (1) a search was made for the original 1977 contract which could not be found in the business offices of Leland Capital Corporation; (2) a "duplicate" was prepared; (3) Philip H. Dohn, Jr. and (Mrs.) Lucy Allen Dohn, of

Atlanta, Georgia, personally appeared in Los Angeles, California, where they and the LCC representative [Stephen Z. Flynn?] executed the "duplicate" in the presence of the notary public, Deborah Lile. Lucy Allen Dohn also completed and signed a questionnaire provided by BLM, in which she made various statements of fact concerning the filing of her offer, plus a third document, again signed "(Mrs.) Lucy Allen Dohn," in which she declared her "business address" to be that of Leland Capital Corporation.

If all of the foregoing events did not occur on April 26, 1978, then the incredible "coincidence" of the anniversary date, as described by Gleicher, never occurred, and there is no "explanation" whatever for the submission of a document which purports on its face to be a machine copy of another document allegedly executed at least a year earlier, and which did not then exist, according to the affidavits of Cotter and Hall. Interestingly, although the spurious copy of the contract was allegedly prepared and executed, apparently in great haste on the very day BLM's demand was received, April 26, 1978, its submission to BLM was delayed until transmitted by LCC vice president Colacecchi's letter dated May 10, 1978, and received by BLM on May 15, 1978.

The oil and gas lease in question apparently is of substantial value, as indicated by the fact that it attracted 4,902 offers, and according to a statement filed by Tina A. Regan at the time she

appealed the rejection of her first-drawn offer. The information and evidence which BLM required was material to its adjudication of which offeror would be awarded the lease, as all concerned were aware. In its adjudication of appeals to determine the rights of parties to receive or preserve interests in Federal lands, this Board has a concomitant obligation to preserve the integrity of the process. We will not turn a blind eye to such strong evidence of willful fraud as is presented by the record in this case. Accordingly, it is the recommendation of this Board that an investigation be initiated to determine whether criminal action should be instigated. See United States v. Weiss, 431 F.2d 1402 (10th Cir. 1970).

Therefore, pursuant to the authority delegated to the Board of Lands Appeals by the Secretary of the Interior, 43 CFR 4.1, the dismissal of the Bielski protest is reversed, the oil and gas lease offer NM 30886 of Lucy Allen Dohn is hereby rejected, and the case is remanded with instructions to the New Mexico State Office to consider the offer of Lee S. Bielski.

Edward W. Stuebing
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

